IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

Writ Petition No.20844 of 2007

1.Mr.Virendra Singh Malik
2.Ms.Mita Banerjee
3.Tmt.P.Rajeswari
4.Mr.A.O.Limatoshi
5.Mr.K.K.Kaushal ... Petitioners

Vs.

1.A.Ramachandran
2.Union of India,
rep.by the Secretary to Government,
Ministry of Environment and Forests,
New Delhi-110003.

3.Government of Tamil Nadu,
rep.by Secretary to Government,
Environment and Forests Department,
Fort St.George,
Chennai-600009.
4.The Principal Chief Conservator of Forests,
Chennai-600015.
5.The Secretary,
Union Public Service Commission,
Dholpur House,
Shajahan Road,
Delhi.
6. Shekhar Kumar Niraj
7.Dr.S.Paulraj
8.D.Arun
9.The Central Administrative Tribunal,
rep.by The Registrar,
Central Administrative Tribunal,
Chennai-600104. ... Respondents

* * *

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Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 9th respondent in connection with the order passed by him in O.A.No.590 of 2006, dated 1.6.2007 and also the order passed by the second respondent in his proceedings No.F.18014/18/2004-IFS II, Government of India, Ministry of Environment and Forests dated 16.3.2005 and quash the same and direct the respondents to take the 1st respondent to the original year of allotment of 1991 and include him in the list in the appropriate place.

* * *

For petitioners : Mr.R.Singgaravelan for M/s.M.Vinoth Singh Misra
For R.1 : Mr.Vijayanarayanan, S.C. for Mr.M.Ravi
For R.2 : Mr.V.T.Gopalan, Addl.S.G. for Mr.P.Wilson, Asst.S.G.
For R3 & R4 : Mr.M.Sekar, Spl.G.P.
For R.5 : Mr.K.Sridhar, ACGSC
For R.6 to R8 : No appearance

* * *

O R D E R

ELIPE DHARMA RAO, J.

The first respondent was directly recruited as Assistant Conservator of Forests in the Tamil Nadu Forest Service through the Tamil Nadu Public Service Commission and joined service on 1.2.1981 and he was confirmed in the said post with effect from 31.12.1983. He was selected to the Indian Forest Service by the Selection committee at its meeting held on 24.3.1994 for selecting candidates for the four vacancies that arose during the period and the first respondent herein was placed at Sl.No.4 and on approval of the Select List, he was posted to the cadre post i.e. District Forest Officer, Thanjavur and joined duty in the said cadre post on 18.6.1994 as per G.O.Ms.No.317, Environment and Forests (FR.Spl.A) Department, dated 8.6.1994 of the second respondent and thereafter, the name of the first respondent was also recommended to the first respondent for appointing him to the Indian Forest Service in the existing vacancy. However, before the promotion proposals could be processed, one Syed Mustafa filed O.A.No.360 of 1994 before the Tribunal to include his name in the Select List of 1992-93 and since the said O.A. was allowed by the Tribunal on 31.8.1994, the name of the said Syed Mustafa was included in the Select List of 1994 and since there were only four vacancies and one vacancy had to be filled by the said Mustafa, the first respondent could not be appointed from the Select List of 1993-94. The

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next Selection Committee meeting was held on 8.3.1995 at Madras, to prepare the Select List for 1995. There were four vacancies and the name of the first respondent was included as S.No.3 and based on the proposal submitted by the Government of Tamil Nadu, three officers, including the first respondent, were appointed to the Indian Forest Service of the year 1995.

2. In the meantime, the Government of Tamil Nadu, by G.O.Ms.No.202, Environment and Forests (FR.Spl.A.) Department, dated 23.6.1995, ordered the first respondent to continue in the cadre post. Therefore, contending that if he had been rightly appointed to the I.F.S., even during 1994, he would have got about one year and six months advancement in the year of allotment and seniority above the other two candidates selected along with him in the year 1995, the first respondent herein filed O.A.No.590 of 2006 before the Tribunal, praying to call for the records of the Government of India, in F.No.18014/18/2004 IFS.II, dated 16.3.2005 and quash the same to the limited extent of re-determination of his seniority and year of allotment and issue consequential directions to the other official respondents to re-determine his seniority in the IFS cadre of Tamil Nadu below Mr.Subrat Mohapatra and above Mr.Shekhar Kumar Niraj and fix the year of allotment as 1989, with consequential benefits.

3. The grievance of the applicant is that he should not have been deprived of the benefit of his selection to the IFS for 1994 in view of the inclusion of the name of Mr.Syed Mustafa, who was not at all in the selection list of 1994, but included as per the order of the Tribunal and in such an event, the official respondents ought to have created a supernumerary post for accommodating Mr.Syed Mustafa, instead, he was appointed at the cost of the first respondent thereby adversely affecting his positing and seniority for no fault of his. He has also contended that once his above grievance is redressed, the date of his continuous officiation in the cadre post alone should be taken into consideration for determining the seniority and his year of allotment in view of Explanation No.1 under Rule 3(2)(c) of the Indian Forest Service (Regulation of Seniority) Rules.

4. It is also submitted that since he was posted to cadre post i.e. District Forest Officer, Thanjavur only after his name having been included in the selection prepared by the Selection Committee and from the date on which he started officiating in the cadre post to the date of his final confirmation in the senior grade, he continued to hold the said post without any break or interruption and thus he has satisfied all the conditions for revision of his seniority and year of allotment as mentioned above and therefore, he should be placed directly below Mr.Subrat Mohapatra of 1989 Batch, fixing the year of allotment as 1989.

5. It is also submitted that his representations to the official

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respondents had finally yielded partial relief to him, fixing his seniority and year of allotment in the Indian Forest Service as 1990 and inter-se seniority by placing him below Mr.D.Arun (SFS 1990), by the Government of India, Ministry of Environment and Forests in F.No.18014/18/2004/IFS.II, dated 16.3.2005.

6. The first respondent herein has also submitted before the Tribunal that the Government of India in their Letter No.F.18014/18/2004-IFS.II, dated 9.3.2005 addressed to the State Government have sought information about junior most direct Recruit Officer of IFS cadre of Tamil Nadu who had officiated continuously in a senior post from a date earlier than the date of officiation of the applicant herein i.e. 9.6.1994, so that the seniority of the applicant is re-determined in the IFS and the Principal Chief Conservator of Forests, by their letter dated 14.3.2005, addressed to the State Government, marking a copy to the Central Government has stated that Thiru Subrat Mohapatra,IFS of the year 1989 is the junior most direct Recruit Officer of IFS cadre of Tamil Nadu who had continuously officiated in a senior post from 17.3.1994. However, the Principal Chief Conservator has also stated in the said letter that if the year of allotment of the applicant has to be re-determined, his seniority has to be fixed below Sheker Kumar Niraj, who is the last directly recruited officer with year of allotment as 1989, which is not at all warranted since the strict application of rules and law relating to re-determination of seniority of IFS with effect from the date of continuous officiation in the cadre post would only enable the applicant to be placed along with the officers whose year of allotment is 1989 only next to the person whose date of officiation falls earlier than that of the applicant.

7. Relying on Rule 4 (4) of the IFS (Regulation of Seniority) Rules, 1968 read with proviso (b), the applicant would further submit that his date of continuous officiation in the cadre post i.e. 9.6.1994 is much earlier to Mr.Shekhar Kumar Niraj, who is the junior most officer directly recruited with year of allotment as 1989, but has commenced to officiate in a cadre post only from 25.3.1995 i.e. much later than the applicant; that though the Principal Chief Conservator of Forests seems to have recommended for the determination of the applicant's year of allotment as 1989, vide Lr.Ref.No.A1/39515/2004, dated 14.3.2005, the Central Government has determined his year of allotment as 1990 instead of 1989 without any basis; that the State Government ought to have taken into consideration the fact that the applicant had been posted to a cadre post only after the inclusion of his name in the select list of 1994 and that the applicant was officiating in the said cadre post continuously from 9.6.1994 till the date of confirmation in the senior grade, without break or interruption and thus he has satisfied all the conditions stipulated for re-determination of seniority by counting the period of his continuous officiation in the cadre post entitling

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him to the fixation of year of allotment as 1989 and therefore he is aggrieved by the act of the Central Government in re-determining his seniority by placing him below Thiru D.Arun, instead of placing him below Thiru Subrat Mohapatra (whose year of allotment is 1989) and by re-determining his year of allotment as 1990 instead of 1989 and even though he has represented the matter to the Central Government, no orders were passed. It is further submitted that such advancement in the year of allotment as well as seniority position would enable him to attain Selection Grade benefits and promotion to the post of Conservator of Forests expeditiously. This claim of the applicant was opposed by the respondents before the Tribunal, including the writ petitioners herein.

8. However, the Tribunal, having found justification in the relief claimed by the applicant, has directed the official respondents to determine the seniority and the year of allotment in the light of the principles set out in the order dated 29.12.2000 in O.A.No.1040 of 1986 by taking into account the continuous officiation of the applicant in the cadre post from 9.6.1994 and with such direction, the Tribunal has set aside the impugned order dated 16.3.2005 to the limited extent of determination of seniority and year of allotment of the applicant.

9. Aggrieved, the respondents 6 to 10 before the Tribunal have come forward to file the present writ petition stating that they are all direct recruitees, having been included in the list of IFS for the year 1990 as per the ranking given by the Union Public Service Commission on merits; that the claim of the applicant for alteration in the year of allotment after the lapse of nearly 10 years is liable to be dismissed on the ground of delay itself. It is also stated that the order of the Tribunal is against the provisions of Indian Forest Services (Cadre) Rules, 1966 and the Indian Forest Service (Regulation of Seniority) Rules, 1997 and the Indian Forest Services (Appointment by Promotion) Regulations, 1966.

10. In this backdrop, now we have to see whether the Tribunal is right in issuing directions to the official respondents.

11. Though, before the Tribunal, the Central Government has resisted the claim of the applicant on the ground that he was not entitled to claim the benefit of officiation, since being contrary to Rule 9(2) of the IFS (Cadre) Rules, 1966 read with Explanation-I to Rule 3(2)(c) of the IFS (Regulation of Seniority) Rules, 1968, in the present writ petition they have supported the claim of the applicant, on the ground that Rule 3(2)(c) with its Explanation and the proviso in its strict application, would entitle the applicant to take into account his officiation in the cadre post. This change of stand by the Central Government was vehemently commented as opposed to law by the learned counsel for the petitioners. However, the learned

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Additional Solicitor General would rely on a judgment of the Honourable Supreme Court in P.NALLAMMAL ANOTHER vs. STATE [(1999) 6 SCC 559] in support of his contentions wherein it has been held:

> "It is open to the State or Union of India or even a private party to retrace or even resile from a concession once made in the court on a legal proposition. Firstly, because the party concerned, on a reconsideration of the proposition could comprehend a different construction as more appropriate. Secondly, the construction of statutory provision cannot rest entirely on the stand adopted by any party in the lis. Thirdly, the parties must be left free to aid the court in reaching the correct construction to be placed on a statutory provision. They cannot be nailed to a position on the legal interpretation which they adopted at a particular point of time because saner thoughts can throw more light on the same subject at a later stage."

12. In view of the above judgment of the Honourable Apex Court, we have no hesitation to hold that the Union of India cannot be found fault with in changing their earlier stance.

13. Insofar as the contention of the writ petitioners that the order of the Tribunal is against the IFS (Regulation of Seniority) Rules, 1997 is concerned, the same cannot at all be accepted since these Rules have come into force only from 1.1.1998 and prior to that, IFS (Regulation of Seniority) Rules, 1968 were in force and since the issue on hand pertains to the period prior to 1.1.1998, only the IFS (Regulation of Seniority) Rules, 1968 would apply.

14. There is no denying of the fact that the first respondent is officiating in the cadre post w.e.f. 9.6.1994 as the DFO, Thanjavur Division till his date of appointment to IFS w.e.f. 9.1.1996. At this juncture, it is to be pointed out that the applicant's name was included in the Select List of 1994 at Sl.No.4, prepared by the Selection Committee, in its meeting held on 24.3.1994. Therefore, it is clear that the first respondent is officiating in the cadre post only after his name was included at Sl.No.4 in the Select List of 1994 and therefore, it cannot, under any circumstance, be held to be violative of any provisions governing the issue. From the materials placed on record, it is clear that the name of the applicant was in the Select List of 1994, but he could not be appointed to IFS, since the name of Mr.Syed Mustafa was included in the Select List of 1994, in compliance with the directions of the Central Administrative Tribunal in O.A.No.360 of 1994, dated on 31.8.1994 and all the four vacancies available at that time were filled-up.

15. The learned counsel for the petitioner would vehemently argue that since the applicant was a non-cadre and non-select list officer,

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his officiating in cadre post, since being fortuitous in nature, cannot be taken into account for the purpose of fixing his seniority in IFS. In support of his contentions, the learned counsel for the petitioner would place reliance on the judgment of the Honourable Apex Court in M.AMANULLAH KHAN vs. GOVERNMENT OF INDIA AND OTHERS [(2004) 7 SCC 586].

16. In the said judgment of the Honourable Apex Court, a non-select list officer was officiating in a cadre post for a period beyond six months without approval of Central Government and UPSC and therefore, in terms of Rule 9 of Cadre Rules, the Honourable Apex Court has observed that such officiation, being a fortuitous one, cannot be taken into account for the purpose of fixing his seniority in IFS. There is no quarrel with regard to the above proposition laid down by the Honourable Apex Court. But, in the case on hand, as has already been discussed supra, only after his name was included in the Select List of 1994 at Sl.No.4, prepared by the Selection Committee, in its meeting held on 24.3.1994, the applicant was officiating in the cadre post w.e.f. 9.6.1994 as the DFO, Thanjavur Division till his date of appointment to IFS w.e.f. 9.1.1996. Therefore, the ratio laid down by the Honourable Apex Court in the above said judgment, strongly relied on by the learned counsel for the petitioners, is factually distinguishable and therefore, cannot be made applicable to the facts of the case on hand.

17. The same argument is also applicable to the other judgment of the Honourable Apex Court in R.R.S.CHOUHAN AND OTHERS vs. UNION OF INDIA AND OTHERS [1995 Supp.(3) SCC 109] relied on by the learned counsel for the petitioner, wherein it was held that 'continuous officiation in a senior post prior to the inclusion in the select list prepared under Regn.5 of Appointment by Promotion Regulations, cannot confer any benefit on the officer in assignment of year of allotment to him' since, as has already been discussed supra, the applicant was officiating in the post only after inclusion of his name in the select list of the year 1994. Therefore, this judgment of the Honourable Apex Court is also very well distinguishable on facts and cannot be made applicable to the facts of the case on hand.

18. At this juncture, it is also to be pointed out that the officiating of the applicant in the cadre post w.e.f. 9.6.1994 as the DFO, Thanjavur Division till his date of appointment to IFS w.e.f. 9.1.1996 was never challenged by any of the parties and even though, before the Tribunal, the Union of India, has opposed the claim of the applicant, now before us, they have corrected their stand, supporting the claim of the applicant.

19. It is also brought to the notice of this Court that the order of the Tribunal was implemented on 18.6.2007 by the respondents and this Court has granted the stay, at the time of admission of the writ

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petition, only on 19.6.2007, i.e. after implementing the orders of the Tribunal and thus, virtually, the order of stay passed by this Court was not in a position to be complied with/implemented by the official respondents.

20. We are also not able to appreciate and accept the strenuous arguments advanced on the part of the petitioners that the applicant is more influential and hence, was able to change his stand to suit his convenience, which was readily accepted by the officiating respondents. On a perusal of the entire materials placed on record, we are unable to find anything to charge the official respondents with favouritism towards the applicant. Thus, when this Court is unable to find any deviation from the procedure prescribed under law by the official respondents, the judgment of the Honourable Apex Court in STATE OF JHARKHAND AND OTHERS vs. AMBAY CEMENTS AND ANOTHER [2005 (1) CTC 223], relied on by the learned counsel for the petitioners does not come to their rescue.

21. Though his name figures at Sl.No.4 in the Select List of 1994 and was also officiating in the cadre post thereafter, the applicant could not be accommodated with IFS, due to the inclusion of the name of one Syed Mustafa in the Select List of 1994 by virtue of the order of the Tribunal in O.A.No.360 of 1994, dated 31.8.1994 and the said order cannot be pitted against the applicant, so as to deny his due.

22. The Tribunal has assessed all the facts and circumstances of the case in their proper perspective, and has arrived at an unerroneous conclusion of directing the official respondents to determine the seniority and the year of allotment of the applicant and on re-appreciation of the entire materials placed on record and in the light of the above discussion, we find no reason to cause our interference into such a well considered and merited order passed by the Tribunal.

In the result, this Writ Petition is dismissed, confirming the order of the Tribunal. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Rao

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To

1.The Secretary to Government of India,
Ministry of Environment and Forests,
New Delhi-110003.

2.The Secretary to Government of Tamil Nadu,
Environment and Forests Department,
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3.The Principal Chief Conservator of Forests,
Chennai-600015.

4.The Secretary,
Union Public Service Commission,
Dholpur House, Shajahan Road,
Delhi.

5.The Registrar,
Central Administrative Tribunal,
Chennai-600104.

+1cc to Mr.M.Vinoth Singh Misra, Advocate Sr 74939
+1cc to Mr.M.Ravi, Advocate Sr 74837
+1cc to Mr.P.Wilson, Advocate Sr 75248
+1cc to K.Sridhar, Advocate Sr 74864

RSV (CO)
km/5.1.

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